

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN, TEXAS

RECEIVED

BOBBY JONES, PRO SE

Plaintiff,

Vs.

MARKUS A. GREEN,
 DR. ROBY MITCHELL, EXECUTIVE
 DIRECTOR OF THE TEXAS MEDICAL
 BOARD, AND THE TRAVIS COUNTY
 DISTRICT ATTORNEY,
 Defendants,

NOV - 9 2011

CAUSE NO: 1-11-cv-00850-LY-AWA

FILED

NOV 09 2011

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 BY [Signature] DEPUTY CLERK

DEFENDANT, GREEN'S, MOTION TO DISMISS or DENY,
 DEFENDANT EXECUTIVE DIRECTOR'S "REPLY TO
 DEFENDANT, GREEN'S, OBJECTION TO THE
 MOTION TO REMAND

I.

THE EXECUTIVE DIRECTOR'S "REPLY TO GREEN'S OBJECTION TO
 THE MOTION TO REMAND IS IRREPARABLY DEFECTIVE:

The Defendant, EXECUTIVE DIRECTOR, HAS ATTEMPTED to file an amendment to her deficient **MOTION TO REMAND**, However, her amendment to her MOTION TO REMAND is also, deficient, because it **does not comply with rule 15 of the F.R.C.P.**

Pursuant to Rule 15, the EXECUTIVE DIRECTOR is first required to file a Motion for Leave to file an amendment, and the EXECUTIVE DIRECTOR has failed to comply with said rule 15. Consequently, her "**REPLY**" must be **DISMISSED or DENIED as NONCOMPLIANT**, BECAUSE SHE HAS NOT BEEN GRANTED a Motion For Leave to file an Amendment in accordance with rule 15.

II.

THIS COURT LACKS JURISDICTION TO GRANT THE EXEC. DIR.'S REPLY :

Pursuant to title 28 U.S.C. § 1447(c); a movant's Motion to Remand must be made within "30 days after the filing of the Notice of Removal", and the defendant, EXECUTIVE DIRECTOR'S specious attempt to file a second, new and improved, MOTION TO REMAND (disguised as an innocuous "REPLY") is **not timely**, because it was filed after the 30days window for filing.

GREEN filed his Notice of Removal on SEPTEMBER 26, 2011 and the EXECUTIVE DIRECTOR'S "REPLY" was filed more than 30days afterward. As such, this Court **lacks jurisdiction to entertain an amended MOTION TO REMAND** at this late date.

Consequently, the EXECUTIVE DIRECTOR'S MOTION TO REMAND - amendment, disguised as a "REPLY" must be **DISMISSED or DENIED**, because this **COURT** does not **HAVE JURISDDICTION TO GRANT "REPLY"**.

III.

THE EXECUTIVE DIRECTOR'S CERTIFICATE of SERVICE IS DEFICIENT

The EXECUTIVE DIRECTOR has **falsely certified** that all parties to this cause of action were timely served, however, the defendant, **MARKUS A. GREEN** has not been served with a " **correct copy of the foregoing document** " as of this date of November 6th, 2011. **GREEN** has become cognizant of this filing because the PLAINTIFF, **BOBBY JONES** has provided him with a handwritten copy on Nov. 4th 2011 (the day service was issued upon him) of the Executive Director's "REPLY".

IV .

GREEN'S CONSTITUTIONAL RIGHTS (1ST AMEND.-ACCESS TO COURTS, 5TH AMEND. DUE PROCESS, & 8th AMEND- DELIBERATE INDIFFERENCE ARE BEING VIOLATED IN ORDER TO PERFECT A REMAND OF THIS CAUSE OF ACTION TO STATE COURT:

State actors (at the Neal Unit- Warden McDuffie, and his agents) have engaged in, and the State Attorney General has permitted defendant **GREEN'S** constitutional rights to be **DENIED** (in order to perfect a Remand) as follows:

- 1) Deprived **GREEN** of his corrective eyewear; after having first approved their purchase, and confiscated said eyewear to inhibit **GREEN'S** ability to research facts in support of his **NOTICE OF REMOVAL**, and thus also inhibit his **ACCESS TO COURTS** UNDER the U.S. 1ST amendment to the const. (See **GREEN'S NOTICE OF REMOVAL** pgs 12-14 already on file with the court) and their failure to provide his eyewear constitutes deliberate indifference.
- 2) Denied **GREEN'S ACCESS TO COURTS** and **DUE PROCESS** rights by ignoring, and leaving, unanswered, all of his I-60 requests for lawlibrary time, (which Green has submitted into the record as exhibits) **GREEN** has been deprived of his U.S. 1ST amendment right to Access the Courts, and his Due Process (14 U.S. Amendment) right to defend his claims adequately;
- 3) Denied **GREEN'S 8th amendment** right to medical care: On friday November 4th 2011, **GREEN** was informed by the N.P. nurse (MS. Tenorio-Paul) that the surgery that he was scheduled for, on August 17 2011 has now been rescinded, despite the fact that it had already been approved and set to take place; the approval date was June 22, 2011 (SEE enclosed "exhibit J"). He was notified that he would now have to wait until his hernia

becomes a "life-threatening emergency" before he can get the surgery; It was rescinded by TDC's top doctor; Dr. Deshields who informed nurse Tenorio-Paul on or about November 1st 2011; by E-mail.

4) Deprived GREEN of his 14 Amendment right to Educational Services:

GREEN has already informed this COURT that the Warden's Office has ignored his I-60 requests (addressed to the Warden's office) to be enrolled in college correspondence course (by re-routing his I-60 to the Law-library clerk, Mr. Gossett) who then responded by saying GREEN need to "write the warden").

Previously, GREEN has tried to enroll in on campus college courses only to be DENIED on the basis that due to his conviction for Prac. Med. W/O Lic. he has been recommended for Sex Offender Treatment Program and with that status he is not allowed to enter college even if he pays for it. This caused him to seek an education outside of the prison but the Warden and Mr. Gossett have conspired to impede it.

5) GREEN'S copy of the Exec. Director's "REPLY" is being delayed:

In an effort to keep GREEN from filing a timely Motion to Deny the Exec. Dir.'s "reply" TO GREEN'S Objections, the State Actors are withholding his copy in order to assist the State Attorney General in perfecting a Remand of this cause.

The totality of these constitutional deprivations are strategically designed to impede GREEN'S access to courts and his Due Process rights by, and through the state actor's use of harassment, and ~~retaliatio~~ retaliatory tactics that are violative of GREEN'S access to courts, and due process rights, and rights to medical services, as well as educational services, and legal mail services; in order to perfect a Remand to state court.

CONCLUSION AND PRAYER

FOR THE FOREGOING REASONS:

1. EXECUTIVE DIRECTOR'S "REPLY" IS DEFECTIVE
- 2) THE U.S. DISTRICT COURT LACKS JURISDICTION TO GRANT REPLY
- 3) THE EXECUTIVE DIRECTOR'S CERTIFICATE OF SERVICE IS DEFICIENT
- 4) GREEN'S CONSTITUTIONAL RIGHTS ARE BEING VIOLATED,

WHEREFORE PREMISES CONSIDERED GREEN PRAYS this COURT will DISMISS/DENY the EXECUTIVE DIRECTOR'S "REPLY" and set this cause of action for an evidentiary hearing, and any other relief to which defendant GREEN is justly entitled.

SIGNED ON THIS 6th DAY OF November 2011.

by:

Markus A. Green
MARKUS A. GREEN

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of november 2011 I Markus A. Green did serve all parties with a true and correct copy (minus the exhibit "J") of this Motion by dropping it into the prison mail box on this day:

Scanned by HANEY, SHAUNA R. in facility MONTFORD (JM) on 06/22/2011 15:44

Defense Exhibit J

SPECIALTY CLINIC NOTES TEXAS DEPARTMENT OF CRIMINAL JUSTICE INSTITUTIONAL DIVISION

Name:

Green, Marcus

TDCJ No.:

1118715

Unit:

Real

Date & Time	Notes
6/22/11 0945	SECURITY AVAILABLE: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO TRIAGE JTM SCREENER: <u>D. Adams, M</u>
	CLINIC: <u>G.S.</u> PROVIDER: <u>Griswald</u>
	CIRCLE: <input checked="" type="checkbox"/> Expedite <input type="checkbox"/> Routine <input type="checkbox"/> I <input type="checkbox"/> II <input type="checkbox"/> III
	SEEN FOR: <u>RTH approx 20 yrs, painful.</u>
	SYMPTOMS: (SUBJECTIVE) SEVERITY: SEVERE MODERATE NO SYMPTOMS
	INFORMATION: VITALS
	T <u>97.8</u> P <u>69</u> R <u>16</u> BP <u>137/9</u> HT <u>5'7"</u> WT <u>160</u> AGE <u>43yB/m</u>
	ALLERGIES: <u>NKDA</u>
	- <u>RTH redness</u>
	- <u>no ves</u>
	- <u>no range</u>
	- <u>OK for approx</u>
	<u>HSP dx</u>
	<u>QJ</u>
	<u># requested for surg RTH - sch - 8-17-11</u>
	<u># 2 P 6-22-11</u>

Please sign each entry with status.

DO NOT WRITE IN THIS AREA

Scan to Mark "Specialty Clinic Notes"

Dr. A. Shields
Head DR TDC

Defense Exhibit J

Markus A. Green #1118715-
Great Unit Facility E-221-B
9055 Spur Rd 591
Amarillo, Texas 79107

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Legal

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WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

Clerk, U.S. District Court
Western District of Texas
United States Courthouse
200 West 8th Street, Room 130
Amarillo, Texas 79101-7634

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